

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

MAIL PROCESSING NETWORK RATIONALIZATION
SERVICE CHANGES, 2011

Docket No. N2012-1

**REPLY OF THE UNITED STATES POSTAL SERVICE
TO MOTION OF THE AMERICAN POSTAL WORKERS UNION
TO PRODUCE A POLICY WITNESS**

The United States Postal Service hereby replies to the above-identified motion dated March 2, 2012. For the reasons stated below, the motion should be denied.¹

In its motion, APWU seeks to have the Commission compel the Postal Service to produce a "policy witness" to testify about the "combined impact on service of the current initiative and the [service change] initiatives proposed in Docket Nos. N2010-1, N2011-1 and [the price change initiative in pending Docket] R2010-4." At page 2, the APWU Motion highlights Postal Service witness David Williams' unfamiliarity with any such "combined impact" analysis and concedes that he cannot testify on the subject. APWU then argues that his interrogatory responses leave open the possibility that "someone within the Postal Service may have looked into these issues." APWU Motion at 2.² However, the responses to institutional interrogatories APWU/USPS-3 through 6 filed today reveal the very limited extent to which that is arguably the case.

APWU argues that "[t]he combined impact of multiple postal initiatives that will affect service must be examined if the Commission is to ensure that the proposed

¹ Insofar as the APWU Motion also seeks responses to interrogatories APWU/USPS-3 through 6, that portion of the motion would appear to be moot as a result of the filing of responses today.

² This is the case only because the interrogatories cited on page 2 in APWU's Motion asked witness Williams to state whether the fact that he was unfamiliar with any such analysis meant that it has not been performed by the Postal Service at all. He dutifully responded by affirming that such analysis could exist without his knowledge.

changes [submitted for review in the instant docket] conform to the policies of Title 39."

The Postal Service does not concede that point as a matter of law here, but is impelled to observe that the Commission was able to fulfill its responsibilities under section 3661 without undertaking any analysis of the "combined impact" on service:

in Docket No. N2010-1, during portions of which Docket Nos. N2009-1 and R2010-4 were pending; and

in Docket No. N2011-1, during which Docket No. R2010-4 was pending and Docket No. N2010-1 had recently been concluded.

In any event, the Postal Service has not undertaken a policy review at the levels that apparently interest APWU, and about which it seeks to compel the appearance of a witness to satisfy its own interest. As indicated in the responses to interrogatories APWU/USPS-3 through 6, the Postal Service has conducted no "combined impact" analysis of the service changes at issue in the instant docket paired with:

the Docket No. N2010-1 service changes that it is currently legislatively barred from implementing, or

the Docket No. N2011-1 service changes that it has postponed implementing until at least the middle of May 2012 while Congress considers legislative solutions to the pending postal financial crisis,

Nor has the Postal Service conducted any "combined impact" analysis in connection with possible exercise of the exigent price change authority remaining as a result of the review of Docket No. R2010-4 by the United States Court of Appeals for the District of Columbia Circuit and any possible subsequent Commission proceedings.

At pages 2-3 of its Motion, APWU argues that:

[t]o the extent that the Postal Service has not previously evaluated the combined impacts it should be required to do so now and provide a witness capable of addressing these issues now.

The Postal Service submits that it is impossible to divine whether the currently pending legislative prohibition against 5-day delivery might be lifted, or what conditions might attach to such a legislative reversal. It is equally impossible to predict the degree to which any legislative response to the current fiscal crisis might affect or even bar service changes that the Postal Service presently is permitted to pursue and/or exigent price change authority that it still has the option to exercise. Thus, APWU's argument at page 3 that "it is near certain that the changes proposed in the current docket will not be implemented in isolation" is nothing more than strident speculation.

At a more fundamental level, APWU's argument amounts to an earnest wish that the law were different. While section 3661 applies to a change in service, implementation itself always occurs in the real world, where those realities then extant must be accommodated. What APWU would prefer is that the request for an advisory opinion also encompass any of various combinations of service and management initiatives that might, or might not, actually be in play at the time when the specific change for which an advisory opinion is requested actually gets implemented. While anyone, including postal management, might prefer to have the foreknowledge that allows accurate prediction of all other changes or trends that will affect implementation of a service change, that is not possible to know. The Postal Service is able to share what it has observed and what it expects, but no one within the agency is able to forecast how implementation may be affected by all then-current events

At page 1 of its Motion, APWU quotes an observation by the Commission in Ruling No. N2012-1/5 that "the need for such a witness has not been shown" as, in effect, establishing a condition precedent to the relief it seeks. However, APWU fails to

argue that such condition has been established; instead APWU simply assumes that it has. And the Postal Service submits that no need for high level policy testimony (that does not exist) has been shown.

The examples APWU cites at page 2 of its Motion show only that certain questions cannot be answered by Postal Service witness Williams, not that they are necessary to the Commission's evaluation of the specific service change for which the Postal Service has requested an advisory opinion.

These simple facts remain: the Postal Service has requested an advisory opinion on a service change described in greater detail than any previous such request; the consequent opinion should be based upon the Postal Service's service change proposal. APWU is, instead, focused upon not just the service change, but the environment in which it may be implemented. While perhaps a reasonable concern in the abstract, APWU would have its intellectual concern compel institution of a requirement that the Postal Service further describe its service change proposal while speculating which of the many service changes, management initiatives, financial developments, and legislative enactments may be in place when the time comes for implementation. APWU thus calls for speculation the Postal Service has not undertaken, and should not be required to conduct as a precondition to the benefits of the Commission's advisory opinion. The fact that none of the previous service change opinions rested upon such speculation illustrates why APWU's position lacks merit.

Hence the requirement in section 3661, as implemented and used consistently by the Commission in the various advisory opinion dockets in recent years, is an examination of the specific service change proposed by the Postal Service. The

Commission should accordingly gather that information reasonably available to inform its opinion whether the proposed changes in service standards would be consistent with the policies of title 39. Assertions that no opinion can be forthcoming until all details of how implementation will take place, in light of an endless array of conceivable permutations, when the postal world finds itself thrashing in an historic world of new challenge, does not present a meaningful or useful way forward.

APWU argues at page 3 that "it is not possible to know the 'true' impact of a service change initiative without examining how it affects and is affected by other actions of the Postal Service." Conversely, the Postal Service would submit that it is impossible to know at this time what other actions it or the Congress can or will take that could affect the impact ("true" or otherwise) of the service changes being examined in the instant docket. Historically, the Commission has managed the section 3661 advisory review process without requiring the Postal Service to know what it cannot know and without requiring it to provide a "policy witness" to testify about hypothetical combinations of service and price changes that it has not analyzed, that are beyond the scope of a pending advisory opinion request, yet still subject to legislative and political suspense and perhaps action.

APWU argues at pages 3-4 that:

[w]ithout the opportunity to understand these likely impacts, including the actual service provided, costs saved and revenue lost, and to evaluate them under the requirements of Title 39, neither the intervenors, the Commission nor the Postal Service can know or state with any certitude that the current proposal complies with the Act.

The Postal Service observes that the intervenors in past section 3661 dockets, APWU included, have never let the absence of perfectly complete data or a lack of certitude deter them from proclaiming whether they regard changes in the nature of service

proposed by postal management to comply with Title 39. Nor is that likely to change in the instant docket. The statutory scheme does not require certitude about every potential material fact on the part of the Commission before it offers a service change advisory opinion. Nor does it require the Postal Service to have examined and resolved every speculation about every conceivable service and price change combination that could theoretically affect a proposed service change before either submitting that change to the Commission for review or implementing it.

Let us now turn to what the Postal Service has done that is in any way responsive to APWU's professed interest. The Postal Service has not relied upon this information, since it is not germane to the specific proposal it has put forth. But the fact is that this is the only information known to exist that in any way responds to APWU's specified concerns. The Postal Service has already made it available.

The response to interrogatory APWU/USPS-5 reveals that during 2011, the Postal Service initiated -- but abandoned without completing -- a market research project intended to evaluate customer response, thus impacts upon volume (hence revenue and contribution) of a grand amalgam of service change concepts and financial challenges, but with the result that no analysis of its preliminary results was pursued. See USPS Library References N2012-1/70 and NP14.³ APWU is free to pursue written discovery pertinent to those documents. Although these library references are

³ See *also*, response to DFC/USPS-T12-9 (February 24, 2012).

disassociated Category 5 materials, hence not sponsored by any postal witness,⁴ APWU is free to pursue limited oral cross-examination of the postal market research witnesses of understanding its relationship to the qualitative and quantitative market research that is sponsored by the Postal Service.

The purpose of this docket is to develop a record that permits the Commission to offer a valuable but non-binding opinion reflecting its view regarding whether title 39 bars the Postal Service from implementing the specific service change proposals submitted for review. APWU's alarm about unexamined service and price change combinations cavalierly ignores that fact that the Postal Service is barred from implementing 5-day delivery. Whether the Postal Service will or will not be permitted to implement any or all of the initiatives listed in the APWU Motion is a matter about which one can do no more than speculate. It is impossible to know whether circumstances may arise that could influence the Postal Service to extend the current moratorium on implementing Docket No. N2011-1 and N2012-1 service changes, or that effectuate changes to the underlying statute. The Postal Service will review its options in response to its deteriorating financial status, intervening events, and any prescriptions that emerge from a very uncertain legislative process.

APWU argues at page 3 that if each of these initiatives are to be implemented, "it is near certain that the changes proposed in the current docket will not be implemented in isolation." APWU's near certitude ignores current prohibition on

⁴ Because that research was abandoned, no analysis of its interim results nor documentation pursuant to Rule 31(k) were developed. While the Postal Service direct case does not rely in any way upon that abandoned effort; other participants could conceivably make use of it. The interim results in NP14, based on questionnaires in library reference 70 that explain the host of challenges inherent to the continued provision of postal services in today's world, comprise the only comprehensive effort the Postal Service made to evaluate the kinds of joint impact that APWU apparently seeks.

implementing 5-day delivery and rests upon the unfounded assumption that the Docket No. N2011-1 and N2012-1 service changes subject to the current moratorium are immune from a similar legislative fate. APWU also presumes a decision to exercise some measure of exigent price change authority that also would not be affected by a future legislative enactment. Even if the fate of all of these initiatives were known to the Postal Service, it would not change the fact that the Postal Service has not conducted any analysis of their combined impacts. See the responses to interrogatories APWU/USPS-3, 4 and 6. Accordingly, the Postal Service should not be compelled to provide a "policy witness" to affirm that fact or to speculate about the impact of service and/or price change combinations that it has not evaluated.

In the second paragraph of page 3 of its Motion, APWU argues that combination of two service change initiatives "would create a larger negative impact on service than either initiative would cause in isolation." It describes adverse consequences that it then asserts are "not hard to imagine." APWU will have the opportunity to present evidence to support its hypotheses. As explained in response to APWU/USPS-5, the Postal Service has not conducted analysis of the sort imagined by APWU.

For the reasons stated above, the Postal Service respectfully requests that the Commission deny the APWU motion to produce a "policy witness" and affirm that its motion to compel responses to APWU/USPS-3 through 6 to be moot.

Respectfully submitted,

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